

**NIQA****UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA****FILED**

DEC 03 2013

MICHAEL E. KUNZ, Clerk  
By \_\_\_\_\_ Dep. Clerk

David H. Fitzgerald

v.

National Railroad Passenger  
Corporation d/b/a Amtrak

Civil Action No.

**13****6979****Jury Trial Demanded*****Complaint***

Plaintiff, David H. Fitzgerald, brings a series of claims against the Defendant, of which the following is a statement:

1. Plaintiff, David H. Fitzgerald, is an African-American male and a resident of this judicial district.

2. Defendant, National Railroad Passenger Corporation d/b/a Amtrak ("Amtrak"), is a publicly funded service operated and managed as a for-profit corporation to provide intercity passenger train service in the United States, with a principal place of business located in this judicial district.

3. This Court has original jurisdiction to hear this Complaint and adjudicate the claims stated herein under 28 U.S.C. §§ 1331, 1343, 2201, 2202 this action being brought under the Civil Rights Act of 1866, 42 U.S.C. §1981 ("Section 1981"), and the Civil Rights Act of 1991, Pub. L. 102-166, 105 Stat. 1071 (Nov. 21, 1991) to redress and enjoin the discriminatory practices of Amtrak. This Court has jurisdiction to adjudicate the Plaintiff's state law claims pursuant to the Court's exercise of supplemental jurisdiction under 28 U.S.C. § 1367.

4. At all times relevant hereto, Amtrak was an "employer" within the meaning of Section 1981 and employed more than 500 persons. The acts set forth in this Complaint were

authorized, ordered and/or done by Amtrak's officers, agents, employees and/or representatives while actively engaged in the management and operation of Amtrak's business.

5. Venue is proper in this District by reason of 28 U.S.C. §1391(b)(2) because Amtrak resides here.

***Background Facts***

6. Fitzgerald began his employment with defendant on April 20, 2009 as a Bridges and Building Mechanic. On October 5, 2009, he became qualified as a B/B Foreman. In November 2009, he became qualified as a B/B Inspector.

7. Beginning in the Fall of 2009, Fitzgerald began applying for promotions at defendant to positions for which he was qualified. Through June 2013, Fitzgerald had applied for at least 28 positions for which he was qualified. However, he was not selected for any of the positions because of his race. Attached hereto as Exhibit A and made a part hereof is a list of the positions Fitzgerald applied for, but was not selected for by defendant because of his race.

8. On or about August 16, 2012, Fitzgerald filed a complaint with defendant's Ethics and Compliance Department about his selections. On or about August 21, 2012, Fitzgerald complained to defendant's Human Resources Department about his non-selections. Defendant took no action in response to Fitzgerald's complaints. However, Gary Lindenmuth, White male, an Assistant Division Engineer and Fitzgerald's supervisor, who also makes selection decisions, commented to another Amtrak employee which was over heard by Fitzgerald, "All the supervisors can't be brothers." This statement was indicative of defendant's racial motivation in failing to select Fitzgerald for any of the supervisory positions for which he applied.

9. On information and belief, the successful candidates selected by defendant for the positions that Fitzgerald applied and was qualified for, and that defendant ultimately filled, were non-Black.

10. On information and belief, defendant acted pursuant to its pattern, practice and long-standing history of failing to promote qualified Black non-exempt employees in the Engineering Department to supervisory positions commensurate with their numbers.

11. By reason of defendant's race discrimination as described above, Fitzgerald suffered extreme harm, including mental anguish, emotional distress, loss of compensation, wages, back and front pay, and other employment benefits.

12. Defendant acted and failed to act with reckless disregard for Fitzgerald's federally protected and State protected rights.

***Count I***

***The Civil Rights Act of 1866, 42 U.S.C. §1981***

13. Plaintiff restates and realleges paragraphs 1- 12, inclusive, as though set forth here in full.

14. Defendant discriminated against Plaintiff by failing to select him for positions he applied and was qualified for because of his race, which denied him the same rights as enjoyed by White employees with respect to the terms and conditions of their employment relationship with defendant and to the enjoyment of all benefits, privileges, terms and conditions of that relationship, in violation of the Civil Rights Act of 1866, 42 U.S.C. §1981, as amended.

15. Defendant's conduct was intentional, deliberate, willful and in callous disregard of Plaintiff's rights.

16. By reason of Defendant's discrimination and retaliation, Plaintiff is entitled to all legal and equitable remedies available under Section 1981, including but not limited to damages for mental anguish and punitive damages.

***Count II***

***Pennsylvania Human Relations Act, 43 P.S. §951***

17. Plaintiff restates and realleges paragraphs 1- 16, inclusive, as though set forth here in full.

18. Defendant is an employer within the meaning of the Pennsylvania Human Relations Act, 43 P.S. §§951-963 (the "PHRA").

19. Defendant discriminated against Plaintiff because of his race in violation of the PHRA.

20. By reason of Defendant's discrimination, Plaintiff is entitled to all legal and equitable remedies available under the PHRA, including, but not limited to, damages for mental anguish and emotional distress.

***Jury Demand***

21. Plaintiff demands a trial by jury of the claims asserted herein.

***Prayer for Relief***

WHEREFORE, Plaintiff, David H. Fitzgerlad, respectfully prays that the Court:

a. adjudge, decree and declare the practices of Defendant complained of herein to be violative of the rights secured to Plaintiff.

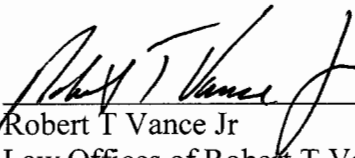
b. issue a permanent prohibitory injunction prohibiting Defendant and its officers, agents, employees, and successors from engaging in the practices complained of herein;

c. enter judgment in his favor and against Defendant for all legal and equitable relief available under Section 1981, the PHRA, including, but not limited to, back pay, front pay, interest, fringe benefits, mental anguish and emotional distress, appropriate job relief in the form of placement in a position for which he had applied but was wrongfully denied, and other compensatory damages in amounts to be determined at trial;

d. order Defendant to pay punitive damages to Plaintiff in an amount to be determined at trial under Section 1981;

e. order Defendant to pay Plaintiff's attorneys' fees, costs, expenses, disbursements, and expert witness fees under 42 U.S.C. §1981a and 42 U.S.C. §1988; and

f. grant such other and further legal and equitable relief as may be found appropriate and as the Court may deem just or equitable.



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215 278 7992 f  
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*Attorney for David H. Fitzgerald*

Exhibit A

<u>Application Date</u>	<u>Position</u>
8.1.10	Assistant Supervisor B&B
8.2.10	Project Development Officer
8.9.10	Director - PSNY
8.10.10	Manager, Project Stations
8.18.10	Staff Engineer
12.21.10	Project Engineer
1.26.11	Project Engineer
12.2.11	ARASA Supervisor
1.11.12	Assistant Supervisor B&B
3.9.12	Director Engineering Facilities
4.2.12	Project Manager Construction
4.26.12	Structures Design Intern
4.26.12	Engineering Discipline Intern
4.26.12	Engineering Intern
6.18.12	Assistant Supervisor B&B/Structures
6.29.12	Project Manager
6.29.12	Director Program Structures
7.18.12	Supervisor B&B
8.10.12	Supervisor B&B
10.9.12	Project Manager Signal Construction
10.9.12	Supervisor B&B
10.9.12	Assistant Supervisor B&B
12.20.12	Assistant Supervisor
2.4.13	Mechanic Foreman B&B
3.4.13	Assistant Supervisor B&B
4.9.13	Supervisor Special Projects
6.6.13	Supervisor
7.17.13	Project Manager Capital Construction
8.6.13	Assistant Supervisor PE
8.7.13	Assistant Supervisor
8.14.13	Assistant Supervisor
8.27.13	Supervisor
8.27.13	Project Manager Administrator
9.3.13	Supervisor PE



The JS 44 civil cover sheet and the information appearing hereon neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

David H. Fitzgerald

**DEFENDANTS**

National Railroad Passenger Corporation d/b/a Amtrak

(b) County of Residence of First Listed Plaintiff Philadelphia  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant n/a  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Robert T Vance Jr, Law Offices of Robert T Vance Jr, 100 South Broad Street,  
Suite 910, Philadelphia PA 19110 215.557.9550

Attorneys (If Known)  
Unknown

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input checked="" type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 U.S.C. §1981

Brief description of cause:  
Employment discrimination - race

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE n/a

DOCKET NUMBER

DEC - 2 2013

DATE

12/02/2013

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

FOR THE EASTERN DISTRICT OF PENNSYLVANIA DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Philadelphia, Pennsylvania

Address of Defendant: Philadelphia, Pennsylvania

Place of Accident, Incident or Transaction: Philadelphia, Pennsylvania

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☐

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☒ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases  
(Please specify) \_\_\_\_\_

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify) \_\_\_\_\_
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases  
(Please specify) \_\_\_\_\_

ARBITRATION CERTIFICATION

(Check Appropriate Category)

Robert T. Vance, Jr, counsel of record do hereby certify:

- ☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☒ Relief other than monetary damages is sought.

DATE: 12/2/2013

Robert T. Vance, Jr  
Attorney-at-Law

37692

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

DEC - 2 2013

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 12/2/2013

Robert T. Vance, Jr  
Attorney-at-Law

37692

Attorney I.D.#



**NIQA**  
**IN THE UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

David Fitzgerald :

CIVIL ACTION

**13 6979**

v.  
 National Railroad Passenger  
 Corporation d/b/a Amtrak

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (x)

December 2, 2013  
 Date

Robert T. Vance, Jr.  
 Attorney-at-law

*Robert T. Vance, Jr.*  
 Attorney for Plaintiff

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